

2184  
#

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Case No. 03-505-A)

In re Application of: Jeffrey S. Hastings et al )  
Serial No.: 09/976,686 ) Group Art Unit: 2184  
Filed: October 11, 2001 ) Examiner: To Be Assigned  
For: Fail Safe Recovery )

TRANSMITTAL LETTER

RECEIVED

Commissioner for Patents  
P.O. Box 1450  
Alexandria Virginia 22313-1450

JUN 13 2003

Technology Center 2100

Dear Sir:

In regard to the above identified application,

1. We are transmitting herewith the attached:

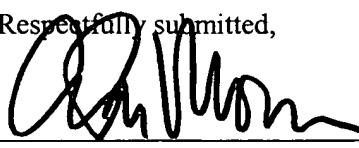
- a) Power of Attorney
- b) Asset Purchase Agreement By and Among Sonicblue Inc./ReplayTV, Inc. and Digital Networks North America, Inc.
- c) Postcard.

2. With respect to fees:

- a) No fee is required.
- b) Please charge any underpayment or credit any overpayment our Deposit Account, No. 13-2490.

Dated: June 11, 2003

Respectfully submitted,



---

Eric R. Moran

Registration No. 50,967



PATENT

#8  
el  
7/24/03

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Case No. 03-505-A)

In re Application of: Jeffrey S. Hastings et al )  
Serial No.: 09/976,686 ) Group Art Unit: 2184  
Filed: October 11, 2001 ) Examiner: To Be Assigned  
For: Fail Safe Recovery )

RECEIVED

JUN 13 2003

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Technology Center 2100

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST**  
(REVOCATION OF PRIOR POWERS)

As assignee of record of the entire interest of the above identified

- application  
 patent

**REVOCATION OF PRIOR POWERS OF ATTORNEY**

all powers of attorney previously given are hereby revoked and

**NEW POWER OF ATTORNEY**

The undersigned hereby appoints all of the practitioners associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith and directs that all correspondence be addressed to that Customer Number:

Customer Number: 020306  
Principal attorney or agent: Bradley J. Hulbert  
Telephone number: 312-913-0001

**Assignee of Entire Interest:**

Name: Digital Networks North America, Inc.  
Address: 19 Chapin Road  
Pine Brook, New Jersey 07058-9777

**EVIDENCE AND CERTIFICATION OF CHAIN OF TITLE**

Recorded in PTO on \_\_\_\_\_

Reel \_\_\_\_\_  
Frame \_\_\_\_\_

Recorded herewith.

**ASSIGNEE CERTIFICATION**

In accordance with 37 C.F.R. § 3.73 the assignee hereby certifies that the evidentiary documents with respect to its ownership have been reviewed and that, to the best of assignee's knowledge and belief, title is in the assignee seeking to take this action.

Date: 6/9/03

  
Signature

Name: James Hollingsworth  
Title: President

---

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**SONICblue INCORPORATED,**

**REPLAYTV, INC.**

**AND**

**DIGITAL NETWORKS NORTH AMERICA, INC.**

**DATED AS OF APRIL 24, 2003**

---

TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I DEFINITIONS .....</b>	1
Section 1.1(a) Definitions .....	1
Section 1.2 Construction .....	4
<b>ARTICLE II PURCHASE AND SALE .....</b>	4
Section 2.1 Purchase and Sale of Assets .....	4
Section 2.2 Excluded Assets .....	5
Section 2.3 Assumed Liabilities .....	5
Section 2.4 Excluded Liabilities .....	5
Section 2.5 Assumption of Certain Leases and Other Contracts .....	5
<b>ARTICLE III PURCHASE PRICE; DEPOSIT; ESCROW; CURE AMOUNTS .....</b>	6
Section 3.1 Purchase Price .....	6
Section 3.2 Escrow .....	6
Section 3.3 Cure Amounts .....	7
<b>ARTICLE IV THE CLOSING .....</b>	7
Section 4.1 Time and Place of the Closing .....	7
Section 4.2 Deliveries by Seller .....	7
Section 4.3 Deliveries by Buyer .....	7
<b>ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER .....</b>	8
Section 5.1 Authority Relative to this Agreement .....	8
Section 5.2 Consents and Approvals; No Violation; Title to Assets .....	8
Section 5.3 Brokers .....	8
Section 5.4 Intellectual Property .....	8
Section 5.5 Ownership; Condition and Sufficiency of the Assets .....	9
Section 5.6 Assumed Agreements .....	9
Section 5.7 Suits, Actions and Claims .....	9
Section 5.8 Disclaimer of Other Representations and Warranties .....	9
<b>ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER .....</b>	10
Section 6.1 Authority Relative to this Agreement .....	10
Section 6.2 Consents and Approvals; No Violation .....	10
Section 6.3 Legal Proceedings and Judgments .....	10
Section 6.4 Brokers .....	10
Section 6.5 Buyer Financing .....	10
Section 6.6 Litigation .....	10
<b>ARTICLE VII COVENANTS OF THE PARTIES .....</b>	10
Section 7.1 Conduct of Business .....	10
Section 7.2 Access to Information; Maintenance of Records .....	11
Section 7.3 Expenses .....	12
Section 7.4 Further Assurances .....	12
Section 7.5 Public Statements .....	13
Section 7.6 Governmental Authority Approvals and Cooperation .....	13
Section 7.7 Taxes .....	13
Section 7.8 Submission for Bankruptcy Court Approval .....	14
Section 7.9 Signage and Labels .....	14
Section 7.10 Leased Real Property .....	14
Section 7.11 Employment Offers .....	15

<b>ARTICLE VIII CONDITIONS TO CLOSING.....</b>	<b>16</b>
Section 8.1     Conditions to Each Party's Obligations to Effect the Closing.....	16
Section 8.2     Conditions to Obligations of Buyer.....	16
Section 8.3     Conditions to Obligations of Seller .....	16
<b>ARTICLE IX TERMINATION AND ABANDONMENT.....</b>	<b>17</b>
Section 9.1     Termination .....	17
Section 9.2     Procedure and Effect of Termination .....	17
Section 9.3     Extension; Waiver .....	17
<b>ARTICLE X MISCELLANEOUS PROVISIONS.....</b>	<b>18</b>
Section 10.1     Amendment and Modification.....	18
Section 10.2     Waiver of Compliance; Consents .....	18
Section 10.3     Survival .....	18
Section 10.4     No Impediment to Liquidation .....	18
Section 10.5     Notices.....	18
Section 10.6     Assignment.....	19
Section 10.7     Severability.....	19
Section 10.8     Governing Law.....	19
Section 10.9     Submission to Jurisdiction.....	19
Section 10.10     Counterparts .....	19
Section 10.11     Incorporation of Exhibits.....	20
Section 10.12     Entire Agreement .....	20
Section 10.13     Remedies .....	20
Section 10.14     Bulk Sales or Transfer Laws .....	20
Section 10.15     Headings .....	20

#### SCHEDULES

Schedule 2.1	Purchased Assets
Schedule 2.2	Excluded Assets
Schedule 2.3	Assumed Liabilities
Schedule 2.5	Assumed Agreements
Schedule 5.2	Consents and Approvals; No Violation; Title to Assets
Schedule 5.4	Intellectual Property
Schedule 5.5	Ownership; Sufficiency of the Assets
Schedule 5.6	Assumed Agreements
Schedule 7.1	Conduct of Business
Schedule 7.4	Further Assurances

#### EXHIBITS

Exhibit A	Form of Assumption Agreement
Exhibit B	Form of Bill of Sale
Exhibit C	Form of Escrow Agreement
Exhibit D	Form of Sale Order

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made and entered into as of this 24th day of April, 2003 by and among SONICblue Incorporated, a Delaware corporation, ReplayTV, Inc., a Delaware corporation and wholly owned subsidiary of SONICblue Incorporated (together, "Seller"), and Digital Networks North America, Inc., a Delaware corporation ("Buyer").

WHEREAS, a portion of Seller's business relates to the design, development, marketing, sale and service of consumer electronics products, including digital video recorders (the "Business");

WHEREAS, Seller has filed Chapter 11 bankruptcy petitions pursuant to Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*; and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain of Seller's assets related to the Business including principally receivables, inventory, equipment, contracts, intellectual property, real property interests, intangibles and other assets, as more particularly set forth herein, free and clear of Encumbrances (as defined below), and to assume from Seller the Assumed Liabilities pursuant to the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1 (a) Definitions. As used in this Agreement, the following terms have the meanings specified in this Section 1.1(a).

"Accounts Receivable" means (i) any and all accounts receivable, notes and other amounts receivable and owed to Seller on account of the Business arising out of, or related to, the sale of goods and/or the provision of services related to the Business, together with all security or collateral therefor and any interest or unpaid financing charges accrued thereon, as of the Closing Date, and (ii) all royalty payments arising after the Closing Date from or related to licenses by Seller of Intellectual Property to third parties that are not Assumed Agreements.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, Affiliate means the power of one or more persons to direct the affairs of the Person controlled by reason of ownership of voting stock, contract or otherwise.

"Assumed Agreements" means all contracts, agreements, personal property leases, commitments, understandings or instruments related to the Business, including the Intellectual Property Agreements, and which are listed on Schedule 2.5 attached hereto, as amended from time to time as contemplated in Section 2.5(a).

"Assumption Agreement" means the Assumption Agreement to be executed and delivered by Buyer and Seller at the Closing, substantially in the form of Exhibit A attached hereto.

"Auction" means the auction held by the Bankruptcy Court for the sale of the Business.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

"Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of California or such other court having competent jurisdiction over the Chapter 11 Case.

"Bidding Procedures Order" means the order entered by the Bankruptcy Court on March 28, 2003 and amended on April 2, 2003, establishing notice, sales and bidding procedures for sale of the Business.

"Bill of Sale" means the Bill of Sale to be executed and delivered by Seller to Buyer at the Closing, substantially in the form of Exhibit B attached hereto.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in San Jose, California.

"Buyer's Representatives" means the Buyer's accountants, employees, counsel, financial advisors and other authorized representatives.

"Chapter 11 Case" means Seller's case commenced under Chapter 11 of the Bankruptcy Code.

"Closing Encumbrances" means statutory liens for current Taxes or assessments not yet due or delinquent.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means the Information (as defined in the Confidentiality Agreement) furnished to Buyer's Representatives pursuant to the Confidentiality Agreement and subject to the confidentiality provisions thereof, and the confidential information relating to Buyer provided to Seller by Buyer.

"Confidentiality Agreement" means the Confidentiality Agreement by and between Buyer and Seller executed in August 2002.

"Encumbrances" means any mortgages, hypothecations, pledges, liens, claims (including options and rights of first refusal), charges, right of third parties (express or implied), other than as set forth in the Assumed Agreements, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, servitudes, deed restrictions, equitable interests, exceptions to title, encumbrances, causes of action, rights, demands and claims (for any and all types of relief) in litigation, charges of any kind and encumbrances affecting property of any nature, whether accrued or unaccrued, tangible or intangible, or absolute or contingent, subject to the Sale Order.

"Final Order" means an order of the Bankruptcy Court (i) as to which the time to appeal shall have expired and as to which no appeal shall then be pending, or (ii) if an appeal shall have been filed or sought, either (A) no stay of the order shall be in effect or (B) if such a stay shall have been granted by the Bankruptcy Court, then (1) the stay shall have been dissolved or (2) a final order of the district court having jurisdiction to hear such appeal shall have affirmed the order and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court order or timely motion to seek review or rehearing of such order shall have been made, any court of appeals having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court's (or lower appellate court's) order upholding the order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible.

"Governmental Authority" means any federal, municipal, state, local or foreign governmental, administrative or regulatory authority, department, agency, commission or body.

"Intellectual Property" means those patents and patent applications (including any abandoned patents or patent applications and the right to reinstate or refile same), registered copyrights and copyright applications, trademarks, trademark applications, tradenames, trade dress, logos, service marks and Internet domain names and URL addresses related to or used in the Business and listed on Schedule 2.1, together with (i) all unregistered intellectual property or other proprietary rights related to the use of any of the foregoing or used in the Business, (ii) all rights to obtain renewals, extensions, continuations, continuations-in-part, reissues, divisions or similar legal protections related thereto and (iii) rights to bring an action at law or in equity for the infringement or other impairment of the foregoing before the Closing Date, including the right to receive all proceeds and damages therefrom.

"Intellectual Property Agreements" means all (i) licenses of intellectual property to Seller, (ii) licenses of Intellectual Property by Seller to third parties that are related to the Business and (iii) other agreements relating to Intellectual Property, in each case as described on Schedule 2.5.

**"Inventory"** means the inventories, including inventory reserves, raw materials, in-process and finished products, of Seller related to and/or used in the Business, including, without limitation, supplies, materials and spare parts of the Business as of the Closing.

**"Knowledge"** means, as to a particular matter, the actual knowledge of (i) with respect to Buyer, its chief executive officer, its chief financial officer or its general counsel, in each case without independent investigation, and (ii) with respect to Seller, its chief executive officer, its chief financial officer or its general counsel, in each case without independent investigation.

**"Leased Real Property"** means that real property at which any of the Purchased Assets are located.

**"Person"** means any individual, corporation, partnership, limited partnership, limited liability company, syndicate, group, trust, association or other organization or entity or government, political subdivision, agency or instrumentality of a government.

**"Petition Date"** means the date on which Seller files voluntary petitions under Chapter 11 of the Bankruptcy Code.

**"Retained Trade Names"** means those trademarks, trademark applications, trade names, corporate or other names related to the Business used by Seller and which are not expressly set forth on Schedule 2.1.

**"Sale Hearing"** means the hearing at which the Bankruptcy Court considers approval of the Sale Order.

**"Sale Order"** means the sale order approved by the Bankruptcy Court for the sale of the Business substantially in the form attached as Exhibit D hereto.

**"Schedules"** means the Schedules listed in the Table of Contents hereto, dated as of the date hereof and as may be updated from time to time, and forming a part of this Agreement.

**"Seller's Representatives"** means Seller's accountants, employees, counsel, financial advisors and other authorized representatives.

**"Tax"** and **"Taxes"** means all taxes, charges, fees, levies, penalties or other assessments of any kind whatsoever imposed by any federal, provincial, municipal, state, local or foreign taxing authority, including any interest, penalties or additions attributable thereto.

**"Tax Return"** means any return, report, information return or other document (including any related or supporting information) required to be supplied to any Governmental Authority with respect to Taxes that are related to the Business.

(b) Each of the terms set forth below shall have the meaning ascribed thereto in the following Section:

<u>Definition</u>	<u>Location</u>
<b><u>"Agreement"</u></b>	Preamble
<b><u>"Allocation"</u></b>	§ 7.7(e)
<b><u>"Assumed Liabilities"</u></b>	§ 2.3
<b><u>"Buyer"</u></b>	Preamble
<b><u>"Buyer Default Termination"</u></b>	§ 3.2
<b><u>"Claim"</u></b>	§ 5.7
<b><u>"Closing"</u></b>	§ 4.1
<b><u>"Closing Date"</u></b>	§ 4.1
<b><u>"Contracts"</u></b>	§ 2.2
<b><u>"Cure Payments"</u></b>	§ 2.5(a)
<b><u>"Deposit"</u></b>	§ 3.2
<b><u>"Escrow"</u></b>	§ 3.2
<b><u>"Escrow Holder"</u></b>	§ 3.2

<u>"Excluded Liabilities"</u>	§ 2.4
<u>"Intangible Property"</u>	§ 2.1(d)
<u>"Order"</u>	§ 5.7
<u>"Personal Property"</u>	§ 2.1(c)
<u>"Purchase Price"</u>	§ 3.1
<u>"Purchased Assets"</u>	§ 2.1
<u>"Receivables"</u>	§ 2.1(e)
<u>"Regulatory Approvals"</u>	§ 7.6(a)
<u>"Seller"</u>	Preamble
<u>"Termination Date"</u>	§ 9.1(e)
<u>"Transaction Taxes"</u>	§ 7.7(a)

Section 1.2 Construction. The terms "hereby," "hereto," "hereunder" and any similar terms as used in this Agreement, refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The term "including," when used herein without the qualifier, "without limitation," shall mean "including, without limitation." Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The word "or" shall not be construed to be exclusive. Provisions shall apply, when appropriate, to successive events and transactions. Unless otherwise indicated, references to Articles and Sections refer to Articles and Sections of this Agreement.

## ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, subject to Section 2.5 as to assumption, at the Closing Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall, by payment of the Purchase Price, purchase and acquire from Seller, free and clear of all Encumbrances (except for Closing Encumbrances), the Purchased Assets. "Purchased Assets" means, collectively, all of the right, title and interest that Seller possesses as of the Closing in and to the following assets, wherever located:

(a) to the extent assignable under Section 365 of the Bankruptcy Code or to the extent assignment is consented to by the third party or third parties to such agreements, all Assumed Agreements;

(b) all Intellectual Property;

(c) all of those items of equipment and tangible personal property owned by Seller and used in connection with the Business, and any other tangible personal property acquired by Seller after the date hereof but prior to the Closing Date and used in connection with the Business (collectively, the "Personal Property"); provided that the Personal Property shall not include the Inventory;

(d) all information used in or arising from the Business including all goodwill, trade secrets, trade secret rights, know-how, customer lists, processes of production, ideas, confidential business information, techniques, processes and formulas, but in all cases only to the extent of Seller's interest therein and only to the extent transferable, together with all books, records and like items pertaining exclusively to the Business (collectively, the "Intangible Property"), provided that the Intangible Property shall in all events exclude (i) any materials containing privileged communications or information about employees, the disclosure of which would violate an employee's reasonable expectation of privacy and any other materials which are subject to attorney client or any other privilege, and (ii) Seller's corporate books and records relating to its organization and existence;

(e) all Accounts Receivable and, subject to Section 2.2, all causes of action relating or pertaining to the foregoing (collectively, the "Receivables");

(f) all Inventory; and

(g) to the extent transferable, all software, databases, networks and systems of Seller and all information contained therein or transmitted thereby used in connection with the Business (the "Systems"), including (i) all software and firmware used, embedded or employed with or in any products manufactured,

marketed or sold by or in the conduct of the Business, (ii) dial-up numbers, websites and connections used to service or send to or receive data from products sold in the course of the Business, and (iii) all network components, routers and modem pools, servers, services and service platforms (including for e-mail, web, authentication and other services), management information systems and network management systems used in the conduct of the Business; provided, that the Systems shall in all events exclude (i) the e-mail and other electronic files and data for those employees of Seller who are not hired by Buyer or are not engaged in the Business, (ii) any materials containing privileged communications or information about employees, the disclosure of which would violate an employee's reasonable expectation of privacy and any other materials which are subject to attorney client or any other privilege, and (iii) Seller's corporate books and records relating to its organization and existence.

**Section 2.2        Excluded Assets.** Notwithstanding any provision herein to the contrary, the Purchased Assets shall not include (i) those items excluded pursuant to the provisions of Section 2.1 above; (ii) all cash and cash equivalents; (iii) Inventory transferred or used by Seller in the ordinary course of the Business prior to the Closing Date; (iv) any lease, rental agreement, contract, agreement, license or similar arrangement (collectively, the "Contracts", each a "Contract") which terminates or expires prior to the Closing Date in accordance with its terms or in the ordinary course of the Business; (v) all preference or avoidance claims and actions of the Seller, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550, respectively, of the Bankruptcy Code; (vi) Seller's rights under this Agreement, and all cash and non-cash consideration payable or deliverable to Seller pursuant to the terms and provisions hereof; (vii) insurance proceeds, claims and causes of action with respect to or arising in connection with (A) any Contract which is not assigned to Buyer at the Closing, or (B) any item of tangible or intangible property not acquired by Buyer at the Closing; (viii) shares of stock of United Microelectronics Corporation owned by Seller or which Seller has the right to acquire; (ix) Seller's right, title and interest to the assets that are primarily related to Seller's GoVideo, modem and graphics chips businesses, including graphics chips patents; (x) Seller's right, title and interest to the assets set forth on Schedule 2.2; and (xi) Seller's assets that are not used in connection with the Business. Through the Closing Date, Buyer may deliver to Seller a list of assets that will be excluded from the transaction and retained by Seller. Any asset so designated shall constitute an Excluded Asset for all purposes under this Agreement as if the same had been expressly identified as an Excluded Asset as of the execution hereof.

**Section 2.3        Assumed Liabilities.** On the Closing Date, Buyer shall execute and deliver to Seller the Assumption Agreement pursuant to which Buyer shall assume and agree to pay, perform and discharge when due the liabilities and obligations of Seller under the end user agreements for ReplayTV service in effect on the Closing Date and the liabilities and obligations of Seller set forth on Schedule 2.3 (collectively, the "Assumed Liabilities"), in accordance with the respective terms and subject to the respective conditions thereof.

**Section 2.4        Excluded Liabilities.** Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liabilities or obligations of Seller other than the Assumed Liabilities (collectively, the "Excluded Liabilities"). In furtherance and not in limitation of the foregoing, the Excluded Liabilities include all (i) Taxes of Seller attributable to the Purchased Assets and the Business with respect to any period or portion thereof that ends on or prior to the Closing Date or arising as a result of the transactions contemplated by this Agreement, other than the Transaction Taxes which are governed by Section 7.7(a) of this Agreement, (ii) liabilities or obligations of Seller arising in connection with the litigation or the subject matter(s) thereof described on Schedule 5.4 or in Section 6.6 and (iii) any obligations or liabilities arising prior to the Closing under the Worker Adjustment and Retraining Notification Act of 1988, as amended, with respect to any of Seller's present or former employees.

**Section 2.5        Assumption of Certain Leases and Other Contracts.** The Sale Order shall provide for the assumption by Seller, and the Sale Order shall, to the extent permitted by law, provide for the assignment by Seller to Buyer, effective upon the Closing, of the Assumed Agreements on the following terms and conditions:

(a)        At the Closing, Seller shall assign to Buyer and Buyer shall assume the Assumed Agreements set forth on Schedule 2.5. From and after the date hereof through the Closing Date, Seller shall make such deletions to the list of Assumed Agreements as Buyer shall request, and the amount of the Cure Payments and Schedule 2.5 shall be modified accordingly. The Assumed Agreements are identified by the date of the Assumed Agreement (if available), the other party or parties to the Assumed Agreement and the address of such party or parties (if available), as the case may be. To the extent any such information is set forth on Schedule 2.5 and is later determined by Seller to be inaccurate in any material respect, Seller shall promptly notify Buyer of any such inaccuracy. Schedule 2.5 sets forth (i) the estimated amounts necessary to cure defaults, if any, under each of the Assumed Agreements as determined by Seller based on Seller's books and records and (ii) deposits, advances,

credits and security deposits made by Seller under each of the Assumed Agreements. At any time following the Sale Hearing and through the date which is three (3) months after the Closing Date, Seller shall promptly notify Buyer if it identifies a contract or agreement to which it or any of its Affiliates is a party related to the Business that has not previously been identified to Buyer and shall simultaneously provide Buyer with a copy of such contract or agreement. At any time following the Sale Hearing and through the date which is thirty (30) days after the Closing Date (subject to the next two sentences), Buyer may notify Seller in writing that Buyer is designating one or more agreements related to the Business, in addition to those set forth on Schedule 2.5, as an agreement to be assigned to Buyer. Notwithstanding the preceding sentence, any contract which Seller provides to Buyer subsequent to the Closing Date that requires any monetary obligation by Seller, including, but not limited to an administrative claim, after receipt of said contract, Buyer shall have five Business Days to notify Seller of whether it intends to assume said contract. Following said five days, Seller is free to reject the contract. Buyer shall have no liability for, and Seller shall not be deemed to have assigned, any agreement until there is an Order of the Bankruptcy Court with respect to said agreement. Seller shall take any other such action as may be reasonably necessary to assign and assume the same, provided Buyer reimburses Seller for any expenses associated therewith. Buyer shall be responsible for all Cure Expenses and shall pay to Seller all Cure Amounts required for the assignment of any such agreement(s) to Buyer.

(b) If there exists on the Closing Date (or thereafter with respect to Assumed Agreements that are subsequently designated) any monetary default under an Assumed Agreement, Buyer shall be responsible for the payment of any and all amounts necessary to cure such default pursuant to Section 365(b)(1) of the Bankruptcy Code as a condition to the assumption and assignment of such Assumed Agreement (the "Cure Payments").

(c) Buyer shall be solely responsible for any and all of its costs and expenses necessary in connection with providing adequate assurance of future performance with respect to any of the Assumed Agreements under Section 365(f) of the Bankruptcy Code (the "Cure Expenses").

(d) In addition to the payment of the Purchase Price and the payment of the Cure Payments, Buyer shall reimburse Seller in cash and in full for any and all deposits, advances and credits and security deposits set forth on Schedule 2.5 (together with the Cure Payments, the "Cure Amounts") and, as promptly as practicable but no later than 5 Business Days following Closing, replace any letters of credit set forth on Schedule 2.5, in all such cases related to any Assumed Agreements.

### ARTICLE III PURCHASE PRICE; DEPOSIT; ESCROW; CURE AMOUNTS

Section 3.1 Purchase Price. In consideration for the Purchased Assets, and subject to the terms and conditions of this Agreement, and the entry and effectiveness of the Sale Order, at the Closing Buyer shall assume the Assumed Liabilities, assume the Assumed Agreements and pay to Seller the amount of \$18,000,000 (the "Purchase Price"). On the Closing Date, Buyer shall (i) pay and deliver to Seller, by wire transfer of immediately available U.S. funds, the Purchase Price less the Deposit (and interest accrued thereon) and (ii) instruct the Escrow Holder (as defined below) to deliver the Deposit (and any interest accrued thereon) to Seller, by wire transfer of immediately available U.S. funds.

Section 3.2 Escrow. Pursuant to the Bidding Procedures Order and prior to the date hereof, Buyer has delivered to Bank One, N.A. a deposit of \$1,200,000 (the "Deposit") payable to the order of SONICblue Incorporated, to be held in escrow until the Auction. Concurrently with the execution of this Agreement, the Deposit shall be placed into escrow (the "Escrow") with Bank One, N.A. (the "Escrow Holder") and Seller and Buyer shall execute the Escrow Agreement substantially in the form attached hereto as Exhibit C (the "Escrow Agreement"). The Deposit shall become nonrefundable upon the earlier of (i) the Closing, or (ii) the termination of this Agreement pursuant to Section 9.1(b) (a "Buyer Default Termination"). At the Closing, the Deposit (and any interest accrued thereon) shall be delivered to Seller and credited toward payment of the Purchase Price in the manner specified in Section 3.1 above. In the event the Deposit becomes non-refundable by reason of a Buyer Default Termination, the Escrow Holder shall, immediately, pursuant to the provisions of the Escrow Agreement, disburse the Deposit and all interest accrued thereon to Seller to be retained by Seller for its own account. If this Agreement or the transactions contemplated herein are terminated other than a termination which constitutes a Buyer Default Termination, the Escrow Holder shall, immediately, pursuant to the provisions of the Escrow

Agreement, return to Buyer the Deposit (together with all interest thereon). The Escrow Holder's escrow fees and charges shall be paid by Buyer.

Section 3.3     Cure Amounts. At the Closing, Buyer shall provide the Cure Amounts to Seller by wire transfer of immediately available U.S. funds. Seller shall transfer the Cure Payments to the counterparty of each and every Assumed Agreement promptly (but in any event within five (5) Business Days) after receipt of the Cure Amounts from Buyer. In the event that the amount required to cure a default under an Assumed Agreement is disputed between Seller and the counterparty to the Assumed Agreement, the amount of such cure payment shall be determined by the Bankruptcy Court. In the event the amount of a Cure Payment related to an Assumed Agreement is not known on the Closing Date, Buyer and Seller shall estimate the amount of the Cure Payment (an "Estimated Cure Payment") and such Estimated Cure Payment shall be placed into an escrow account with an escrow agent, financial institution or company (the "Cure Escrow Holder") reasonably designated by Buyer. If an Estimated Cure Payment is more than the Cure Payment when the amount is known, the excess shall be returned to Buyer and if the Estimated Cure Payment is less than the Cure Payment when the amount is known, Buyer shall pay the additional funds to Seller by wire transfer in immediately available U.S. funds.

#### ARTICLE IV THE CLOSING

Section 4.1     Time and Place of the Closing. Upon the terms and subject to the satisfaction of the conditions contained in Article VIII of this Agreement, the closing of the sale of the Purchased Assets and the assumption of the Assumed Liabilities and Assumed Agreements contemplated by this Agreement (the "Closing") shall take place at the offices of Pillsbury Winthrop LLP, 2550 Hanover Street, Palo Alto, California, at 10:00 A.M. (local time) no later than the fifth (5<sup>th</sup>) Business Day following the date on which the conditions set forth in Article VIII have been satisfied (other than the conditions with respect to actions the respective parties hereto will take at the Closing itself) or, to the extent permitted, waived in writing, or at such other place and time as Buyer and Seller may mutually agree. The date and time at which the Closing actually occurs is herein referred to as the "Closing Date."

Section 4.2     Deliveries by Seller. At or prior to the Closing (or as specifically provided in this Section 4.2), Seller shall deliver the following to Buyer:

- (a)     the Bill of Sale, duly executed by Seller;
- (b)     all consents, waivers and approvals obtained by Seller with respect to the sale, assignment, conveyance, transfer and delivery of the Purchased Assets and the consummation of the transactions required in connection with the sale of the Purchased Assets contemplated by this Agreement, to the extent specifically required hereunder;
- (c)     the certificate contemplated by Section 8.2(b);
- (d)     certified copies of the resolutions duly adopted by Seller's board of directors authorizing the execution, delivery and performance of this Agreement and each of the other transactions contemplated hereby;
- (e)     the Assumption Agreement, duly executed by Seller, and all such other instruments of assignment or conveyance as shall be reasonably necessary to transfer to Buyer all of the Purchased Assets in accordance with this Agreement (to be delivered as of the close of business on the Closing Date); and
- (f)     a copy of the Sale Order.

Section 4.3     Deliveries by Buyer. At or prior to the Closing (or as specifically provided in this Section 4.3), Buyer shall deliver the following to Seller:

- (a)     the Purchase Price in accordance with Section 3.1 and Section 3.2;
- (b)     certified copies of Buyer's Certificate of Incorporation and Bylaws, each as in effect as of the Closing;

(c) certified copies of the resolutions duly adopted by Buyer's board of directors authorizing the execution, delivery and performance of this Agreement and each of the other transactions contemplated hereby;

(d) the Assumption Agreement, duly executed by Buyer, and all such other instruments of assumption as shall be reasonably necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement (to be delivered as of the close of business on the Closing Date);

(e) the Cure Amounts in accordance with Section 3.3; and

(f) the certificate contemplated by Section 8.3(b).

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

**Section 5.1      Authority Relative to this Agreement.** Subject to the applicable provisions of the Bankruptcy Code and the approval of this Agreement by the Bankruptcy Court, Seller has all corporate power to execute and deliver this Agreement and, upon entry and effectiveness of the Sale Order, will have all corporate authority necessary to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the board of directors of Seller and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller, and assuming that this Agreement constitutes a valid and binding agreement of Buyer, and, subject to the entry and effectiveness of the Sale Order and any applicable Bankruptcy Code provision, constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

**Section 5.2      Consents and Approvals; No Violation; Title to Assets.** Except as described on Schedule 5.2 and except to the extent excused by or unenforceable as a result of the filing of the Chapter 11 Case and except for the entry and effectiveness of the Sale Order, neither the execution and delivery of this Agreement nor the sale by Seller of the Purchased Assets pursuant to this Agreement will conflict with or result in any breach of any provision of Seller's Certificate of Incorporation or Bylaws; or require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority which has not otherwise been obtained or made (provided that Seller makes no representation or warranty as to the necessity or advisability of any foreign antitrust filing which may be required by virtue of Buyer's status in any foreign jurisdiction). Seller has good and valid title to the Purchased Assets. At the Closing, Buyer, pursuant to the Sale Order, shall acquire (subject to such being assumed and assigned in accordance with Section 2.1) all of the Purchased Assets, in each case free and clear of all Encumbrances except for Closing Encumbrances. The representations and warranties of Seller in this Section 5.2 as to Purchased Assets that are Assumed Agreements are made only with respect to those Assumed Agreements listed on Schedule 2.1 or Schedule 2.5 at the execution of this Agreement.

**Section 5.3      Brokers.** Except for Houlihan Lokey Howard & Zukin Capital, no Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by Seller or any of its respective Affiliates in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller. Such fees shall be paid in full by Seller.

**Section 5.4      Intellectual Property.** Except as set forth on Schedule 5.4, to Seller's Knowledge, (i) Seller owns or has the valid right to use all intellectual property necessary to conduct the Business as currently conducted and as is consistent with past practice; (ii) all of the Intellectual Property is owned by Seller free and clear of all Encumbrances, is currently subsisting and is valid and enforceable; (iii) the consummation of the transactions contemplated hereby will not impair, limit, terminate or nullify any rights relating to the Intellectual Property or Intellectual Property Agreements or cause any payments to be due with respect thereto; (iv) the conduct of the Business (including the use of any Intellectual Property) does not infringe, dilute, misappropriate, impair or otherwise violate ("Infringe") any intellectual property rights of any third party, and no third party is Infringing upon any of the Intellectual Property and (vi) there are no pending or threatened claims, actions, investigations or legal, administrative or arbitration proceedings (each, a "Claim") that would limit, cancel or question the validity,

enforceability, ownership or use of any of the Intellectual Property or pursuant to which Seller is alleged to infringe the intellectual rights of any third party. The representations and warranties of Seller in this Section 5.4 with respect to Intellectual Property Agreements are made only with respect to those Intellectual Property Agreements listed on Schedule 2.1 or Schedule 2.5 at the execution of this Agreement.

**Section 5.5      Ownership; Condition and Sufficiency of the Assets.**

(a) Except as set forth on Schedule 5.5, Seller has the right to deliver, sell, transfer and assign all of the Purchased Assets free and clear of all Encumbrances, except Closing Encumbrances. The representations and warranties of Seller in this Section 5.5(a) are made only with respect to those Assumed Agreements listed on Schedule 2.1 or Schedule 2.5 at the execution of this Agreement.

(b) Except as set forth on Schedule 5.5, other than (x) the contracts listed on the Exhibits to Seller's Notice of Supplement to Cure Amount Schedules filed with the Bankruptcy Court on April 10, 2003 that are not Assumed Agreements, (y) the contracts listed on Schedule 7.4 that Buyer does not subsequently assume pursuant to Section 2.5, and (z) those Systems that are not transferable, the Purchased Assets constitute all of the assets, properties, rights, privileges and interests (i) of Seller and/or any of its Affiliates used or held for use in the operation or conduct of the Business and (ii) necessary for the operation or conduct of the Business as presently conducted.

**Section 5.6      Assumed Agreements.** Except as set forth on Schedule 5.6 and subject to the entry of the Sale Order, all Assumed Agreements will be valid, binding and in full force and effect in accordance with their terms and there will be no existing defaults or claims of default thereunder or breach thereof by Seller or, to Seller's Knowledge, by any other party to any of the Assumed Agreements. No condition exists which, with the passage of time or the giving of notice or both, will constitute a default by Seller or, to Seller's Knowledge, by any other party to any of the Assumed Agreements. None of the Assumed Agreements will be breached by, or give any other party a right of termination as a result of, any of the transactions contemplated by this Agreement. The representations and warranties of Seller in this Section 5.6 are made only with respect to those Assumed Agreements listed on Schedule 2.1 or Schedule 2.5 at the execution of this Agreement.

**Section 5.7      Suits, Actions and Claims.**

(a) Except as set forth on Schedule 5.4, there is no outstanding order, rule, verdict, writ, injunction, settlement or decree (each, an "Order") of any Governmental Authority against or affecting Seller with respect to the Business or the Purchased Assets.

(b) Except for those facts and information not disclosed to Buyer or Buyer's outside counsel because, in the reasonable opinion of Seller or Seller's outside counsel, such facts and information were subject to a court ordered protective order, joint defense agreement or attorney-client privilege, to Seller's Knowledge, Seller has provided Buyer with facts and information reasonably necessary to perform a reasonable evaluation of the potential liability and outcome relating to the claims, actions or proceedings listed on Schedule 5.4 and/or described in Section 6.6. Without limiting the foregoing, the facts and information not disclosed to Buyer by reason of any court ordered protective order, joint defense agreement or attorney-client privilege do not differ in any material respect from the facts and information that have been disclosed by Seller to Buyer and would not have a material impact or effect upon Buyer's evaluation of such potential liabilities or outcomes.

**Section 5.8      Disclaimer of Other Representations and Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE V, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF ITS ASSETS (INCLUDING THE PURCHASED ASSETS), LIABILITIES OR OPERATIONS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THIS ARTICLE V, BUYER IS PURCHASING THE PURCHASED ASSETS ON AN "AS-IS, WHERE-IS" BASIS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING ANY ASSETS OTHER THAN THE PURCHASED ASSETS, AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 6.1 Authority Relative to this Agreement. Buyer has all corporate power and authority necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the board of directors of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer, and, assuming that this Agreement constitutes a valid and binding agreement of Seller, constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

Section 6.2 Consents and Approvals; No Violation. Except for the entry and effectiveness of the Sale Order, neither the execution and delivery of this Agreement by Buyer, nor the purchase by Buyer of the Purchased Assets and the assumption by Buyer of the Assumed Liabilities and the Assumed Agreements pursuant to this Agreement will: (a) conflict with or result in any breach of any provision of Buyer's Certificate of Incorporation or Bylaws; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority which has not otherwise been obtained or made; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

Section 6.3 Legal Proceedings and Judgments. There are no material claims, actions, proceedings or investigations pending or, to Buyer's Knowledge, threatened against or relating to Buyer before any court or other Governmental Authority acting in an adjudicative capacity that could have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

Section 6.4 Brokers. No Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer other than those for which Buyer shall have sole responsibility.

Section 6.5 Buyer Financing. As of the date of this Agreement and on the Closing Date, Buyer has and will have funds sufficient to pay the Purchase Price and all of its fees and expenses incurred in connection with the transactions contemplated hereby, including all Cure Amounts and Cure Expenses and any applicable Transaction Taxes for which Buyer shall have payment responsibility pursuant to Section 7.7(a) hereof.

Section 6.6 Litigation. Buyer acknowledges that it has been made aware of the following copyright lawsuits involving ReplayTV, Inc.: Paramount Pictures Corp., et al. v ReplayTV, Inc. and SONICblue Incorporated, Case No. CV-01-09358 FMC, Time Warner Entertainment Company v. ReplayTV, Inc., Metro Goldwyn Mayer Studios Inc. v. ReplayTV, Inc., Colombia Pictures Industries, Inc. v. ReplayTV, Inc., and Craig Newmark v. Turner Broadcasting Corporation, Case No. CV 92-04445 ER. Buyer acknowledges that it has received copies of the complaints filed in the foregoing lawsuits.

## ARTICLE VII COVENANTS OF THE PARTIES

Section 7.1 Conduct of Business. (a) Except as (1) described on Schedule 7.1 or (2) required by any order (including as to cash collateral) of the Bankruptcy Court or the Bankruptcy Code, during the period commencing on the date of this Agreement and ending on the Closing Date, Seller shall, in each case taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code, (i) operate the Business in the usual, regular and ordinary course, (ii) other than as permitted in writing by Buyer, preserve in all material respects the Business, the Purchased Assets, its employees and its operations and (iii) endeavor to preserve, in all material

respects, the goodwill and relationships with customers, suppliers and others having business dealings with the Business.

(b) Prior to the Closing Date Seller shall not sell, lease (as lessor), transfer or otherwise dispose of any of the Purchased Assets other than sales of inventory in the ordinary course of business, taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code with respect to such sales of inventory.

(c) With respect to the Leased Real Property, Seller agrees that, between the date of this Agreement and the Closing Date, Seller shall (i) maintain the Leased Real Property in substantially the same condition as exists on the date hereof, reasonable wear and tear excepted, (ii) operate the Leased Real Property in compliance with all applicable laws, rules, regulations and codes in all material respects, (iii) maintain in full force and effect all property and liability insurance policies on the Leased Real Property in effect as of the date hereof and (iv) afford Buyer and Buyer's Representatives reasonable access during normal business hours to the Leased Real Property and all agreements, books, records and other documents and data of Seller related thereto, provided that Seller need not supply Buyer with any information which Seller is under a legal obligation not to supply, including customer specific costing and pricing information, taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code.

(d) During the period commencing on the date of this Agreement and ending on the Closing Date, Seller covenants that it will not, absent the written consent of Buyer, (i) in the case of the Accounts Receivable, change the terms of such Accounts Receivable in a manner that is inconsistent with current practices or (ii) in the case of all sales subsequent to the date hereof, provide for any customer or type of customer terms for sales that are inconsistent with current practices for such customer or type of customer.

(e) Prior to the Closing Date, Seller shall not pay, discharge, settle or satisfy any litigation (whether or not commenced prior to the date hereof) identified in Schedule 5.4 and/or Section 6.6.

**Section 7.2 Access to Information; Maintenance of Records.** (a) Between the date of this Agreement and the Closing Date, Seller shall, during ordinary business hours, upon reasonable notice, (i) give Buyer and Buyer's Representatives reasonable access to all books, records, offices and other facilities constituting the Purchased Assets or at which the same are located to which Buyer is not denied access by law, (ii) permit Buyer to make such reasonable inspections thereof as Buyer may reasonably request, and (iii) furnish Buyer with such financial and operating data and other information with respect to the Business as Buyer may from time to time reasonably request; provided, however, that (A) any such access shall be conducted in such a manner so as not to interfere unreasonably with the operation of the Business and shall be at the expense of Buyer, (B) Seller shall not be required to take any action which would constitute a waiver of the attorney-client privilege and (C) Seller need not supply Buyer with any information which Seller is under a legal obligation not to supply or any information, documents or materials related to customer-specific costing and pricing information or product development. Notwithstanding anything in this Section 7.2(a) to the contrary, Buyer shall not have access to any employee records or other personal and medical records or other records, which in Seller's good faith judgment, are sensitive or the disclosure of which could subject Seller to any risk of liability.

(b) Buyer and Seller acknowledge that they are bound by the Confidentiality Agreement. All information furnished to, or obtained by Buyer, or any of Buyer's Representatives pursuant to this Agreement, shall be subject to the provisions of the Confidentiality Agreement and shall be treated as Confidential Information for all purposes of the Confidentiality Agreement.

(c) Between the Closing Date and the later of (x) the third anniversary of the Closing Date and (y) the date of entry of an order or final decree of the Bankruptcy Court closing the Chapter 11 Case, or if converted to a case under Chapter 7 of the Bankruptcy Code, an order of the Bankruptcy Court closing such case, Seller, the Official Creditors Committee, any successor to Seller and their respective Representatives shall have reasonable access to all of the books and records relating to the Business or the Purchased Assets, including all information pertaining to the Assumed Agreements, in the possession of Buyer to the extent that such access may reasonably be required by Seller in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the Business and the Purchased Assets. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours; provided, however, that (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of Buyer or its Affiliates, (ii) Buyer shall not be required to take any action which would constitute a

waiver of the attorney-client privilege, and (iii) Buyer need not supply Seller with any information which Buyer is under a legal obligation not to supply. Seller shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 7.2(c). If Buyer shall desire to dispose of any such books and records upon or prior to the expiration of such period, Buyer shall, prior to such disposition, give Seller a reasonable opportunity at Seller's expense, to segregate and remove such books and records as Seller may select. Buyer acknowledges that Seller has only recently filed its Chapter 11 bankruptcy petitions, has a bankruptcy case to administer and will need to avail itself regularly of the procedures described in this Section 7.2(c). From and after the Closing, Buyer shall make available for Seller's use those Systems reasonably necessary for Seller's administration of its affairs through the closing of Seller's bankruptcy estate.

**Section 7.3      Expenses.** Except to the extent specifically provided herein or in the Sale Order, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

**Section 7.4      Further Assurances.** (a) Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Purchased Assets in accordance with this Agreement, including using commercially reasonable efforts to ensure (i) timely satisfaction of the conditions precedent to each party's obligations hereunder and (ii) other than (x) the contracts listed on the Exhibits to Seller's Notice of Supplement to Cure Amount Schedules filed with the Bankruptcy Court on April 10, 2003 that are not Assumed Agreements, (y) the contracts set forth on Schedule 7.4 that Buyer does not subsequently assume pursuant to Section 2.5, and (z) those Systems that are not transferable, the Purchased Assets transferred to Buyer comprise all assets required for the continued conduct of the Business by Buyer as now being conducted by Seller and its Affiliates other than central corporate functions performed by SONICblue on behalf of the Business and its other businesses. Neither Seller, on the one hand, nor Buyer, on the other hand, shall, without the prior written consent of the other party take any action which would reasonably be expected to prevent or materially impede, interfere with, or delay the transactions contemplated by this Agreement. From time to time, on or after the Closing Date, Seller shall, at Buyer's expense, execute and deliver such documents to Buyer as Buyer may reasonably request in order to more effectively vest in Buyer Seller's title to the Purchased Assets, subject to Closing Encumbrances, but otherwise free and clear of all Claims and Encumbrances. From time to time after the date hereof, Buyer shall, at Seller's expense, execute and deliver such documents to Seller as Seller may reasonably request in order to more effectively consummate the sale of the Purchased Assets and the assumption and assignment of the Assumed Liabilities and the Assumed Agreements free and clear of all Claims and Encumbrances (subject to Closing Encumbrances) in accordance with this Agreement.

(b) In the event that any Purchased Asset or Assumed Agreement (including any designated by Buyer following Closing) shall not have been conveyed to Buyer at the Closing, Seller shall use its commercially reasonable efforts to convey such Purchased Asset or Assumed Agreement free and clear of all Claims and Encumbrances (subject to Closing Encumbrances) to Buyer as promptly as is practicable after the Closing.

(c) To the extent that Seller's rights under any Assumed Agreement may not be assigned without the consent of another Person, which consent Seller has used commercially reasonable efforts to obtain, but nevertheless such consent has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller shall use its commercially reasonable efforts (without being required to make any payment to any third party or to incur any material economic burden and taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code) to obtain any such required consent(s) in respect of any such Assumed Agreement as promptly as practicable; and Buyer agrees to cooperate with Seller in its efforts to obtain any such consent (including the submission of such financial or other information concerning Buyer and the execution of any assumption agreements or similar documents reasonably requested by a third party) without being required to make any payment to any third party or to incur any economic burden.

(d) From and after the Closing Date, Seller shall use its commercially reasonable efforts, including making available any appropriate employees, to assist Buyer in transporting the Purchased Assets to Buyer's facilities at Buyer's cost.

**Section 7.5      Public Statements.** Seller and Buyer shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby, except that the parties may make disclosures with respect to this Agreement and the transactions contemplated hereby to the extent required by law or by the rules or regulations of any securities exchange or commission and to the extent and under the circumstances in which the parties are expressly permitted by the Confidentiality Agreement to make disclosures of Confidential Information.

**Section 7.6      Governmental Authority Approvals and Cooperation.**

(a)      **Governmental Authority Approvals.** Seller and Buyer shall each use their commercially reasonable efforts to cooperate with each other in determining and making any filings, notifications and requests for approval required to be made and received prior to the Closing under applicable law or regulation (collectively, the "Regulatory Approvals"). In connection with any Regulatory Approvals, neither Buyer nor Seller will, and Buyer and Seller will use their commercially reasonable efforts to cause their officers, directors, partners or other Affiliates not to, take any action which could reasonably be expected to materially and adversely affect the submission of any required filings or notifications or the grant of any such approvals.

(b)      **Cooperation.** Each party hereto (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby and any filing, notification or request for approval related thereto and (ii) shall permit the other party hereto to review in advance any proposed written communication or information submitted to any such Governmental Authority in response thereto. In addition, neither Seller nor Buyer shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement, the transactions contemplated hereby or any such filing, notification or request for approval related thereto unless it consults with the other party hereto in advance and, to the extent permitted by any such Governmental Authority, gives the other party hereto the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, Seller and Buyer shall furnish Buyer or Seller, as the case may be, with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements and to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval related thereto. Seller and Buyer shall also furnish the other party hereto with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with its preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval related thereto. Seller and Buyer shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective commercially reasonable efforts to obtain the grant thereof as soon as possible.

**Section 7.7      Taxes.**

(a)      **Taxes Related to Purchase of Assets.** The parties recognize and acknowledge that, because the sale, transfer, assignment and delivery of the Purchased Assets is being made in connection with Seller's plan of reorganization, they may be exempt under Section 1146(c) of the Bankruptcy Code and the Sale Order from state and local transfer, recording, stamp or other similar transfer taxes (collectively "Transaction Taxes") that may be imposed by reason of the transactions contemplated by this Agreement; provided, however, that if Transaction Taxes are assessed for any reason, Buyer and Seller shall equally pay all such Transaction Taxes along with any recording and filing fees, if applicable. Buyer and Seller agree to cooperate to determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement. At the Closing, Buyer and Seller shall remit to each other such properly completed resale exemption certificates and other similar certificates or instruments as are applicable to claim available exemptions from the payment of sales, transfer, use or other similar taxes under applicable law. Buyer and Seller will cooperate in preparing such forms and will execute and deliver such affidavits and forms as are reasonably requested by the other party. Seller shall, if necessary, and Buyer shall cooperate with Seller to seek any determination of the exemption from Transaction Taxes through submitting any dispute thereof to the state or local government unit charged with responsibility for collection or determination of the disputed tax pursuant to Bankruptcy Code Section 1146(d).

(b) No Withholding. Buyer shall pay the Purchase Price free and clear of withholding or deduction for any Taxes.

(c) FIRPTA Certification. Seller shall deliver to Buyer a certification to the extent required under Section 1445 of the Code in accordance with the Treasury Regulations thereunder.

(d) Allocation of Taxes. Buyer shall be liable for and shall be allocated all Taxes in respect of the Purchased Assets with respect to taxable periods (or portions thereof) that end after the Closing Date.

(e) Allocation of Purchase Price. Buyer and Seller shall (i) attempt in good faith, within thirty (30) days after the Closing, to agree on the allocation of the sum of the Purchase Price, the Cure Amounts and the Assumed Liabilities (and any adjustments thereof) among the Purchased Assets as of the Closing Date (the "Allocation") in accordance with Section 1060 of the Code and the Treasury Regulations thereunder and (ii) cooperate in connection with the preparation of Internal Revenue Service Form 8594 for its timely filing. Except as otherwise required by applicable law, Buyer and Seller shall report for all Tax purposes all transactions contemplated by this Agreement in a manner consistent with the Allocation, if any, and shall not take any position inconsistent therewith in any Tax Return, in any refund claim, in any litigation or otherwise.

(f) Cooperation. Buyer and Seller agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to Seller's operations as is reasonably necessary for the preparation and filing of any Tax Return, for the preparation for and proof of facts during any tax audit, for the preparation for any tax protest, for the prosecution or defense of any suit or other proceeding relating to tax matters and for the answer of any governmental or regulatory inquiry relating to tax matters.

#### Section 7.8 Submission for Bankruptcy Court Approval.

(a) Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court (and other courts) that Seller has in its possession pertaining to the motion for approval of any order related to any of the transactions contemplated by this Agreement.

(b) If the Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby, shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order or other such order), subject to rights otherwise arising from this Agreement, Seller and Buyer shall cooperate in taking such steps to prosecute diligently such appeal, petition or motion and Seller and Buyer shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

Section 7.9 Signage and Labels. Buyer will remove Retained Trade Names from all Purchased Assets and other items related to the Business as soon as practicable but in any event within 60 days after the Closing Date. Buyer may use Retained Trade Names on finished goods inventory that constitutes part of the Purchased Assets but will change or otherwise replace the stamps and dies bearing Retained Names as soon as practicable after the Closing Date but in any event within 90 days after the Closing Date. Buyer may not use publicly any business records without first removing, covering or obliterating all portrayals or references to any of Retained Trade Names (other than with respect to the Intellectual Property) contained in such records, unless Buyer takes reasonable steps to prevent third-party confusion or Seller consents prior to such usage.

Section 7.10 Leased Real Property. From and after the Closing Date until the earlier of (i) the date all Purchased Assets have been removed by Buyer or (ii) May 31, 2003, Buyer shall have access to the Leased Real Property sufficient to enable Buyer to remove the Purchased Assets therefrom as promptly as practicable. Through the earlier of such dates, Seller shall permit Buyer to make reasonable use of Seller's Santa Clara Leased Real Property at the address set forth in Section 10.5(a) to facilitate Buyer's commencement of the Business, provided that Buyer agrees to (i) keep such use segregated from other business being conducted on such premises and (ii) indemnify and hold Seller harmless from any loss, liability or damage to the extent directly attributable to Buyer's use of such premises. Buyer and Seller shall use reasonable commercial efforts to cooperate with each other in all matters relating to Buyer's use of Seller's Santa Clara Leased Real Property, including all matters necessary or desirable to permit each party to perform its obligations hereunder. Through such time as Buyer shall make use of the Santa Clara Leased Real Property, Buyer shall pay for all non-rent expenses arising from such use of such real

property, including utilities, telephone service, insurance and real property taxes (to the extent Seller is responsible for any such real property taxes).

**Section 7.11     Employment Offers.** Between the date hereof and the Closing Date, Seller shall allow Buyer access to its employees in connection with Buyer's determination of which, if any, of Seller's employees who provide services to the Business will receive offers of employment from Buyer. Buyer may offer employment to none, some or all of Seller's employees who provide services to the Business prior to the Closing Date, in Buyer's sole discretion; provided, however, it shall be a condition precedent to each such offer of employment that the Closing shall have occurred. Seller shall allow Buyer reasonable access to speak with the employees related to the Business but shall neither encourage nor discourage such employees from seeking or taking employment with Buyer. With respect to any Employee identified by Buyer as likely to receive an offer of employment with Buyer pursuant to Section 7.11, Seller shall promptly provide (on a confidential basis) such Employee's salary or wages and aggregate compensation for Seller's last fiscal year. For avoidance of doubt (i) Buyer and Seller agree that Buyer shall not assume any benefit plan, including any court approved retention or bonus plan, or any part thereof for any employee of Seller to whom Buyer may choose to extend an offer of employment with Buyer and (ii) none of Seller's employees shall be a third-party beneficiary (or otherwise have the right to enforce) this Section 7.11 or any other provision of this Agreement.

**Section 7.12     Transition Services.**

(a)     **Payroll and Employee Benefits Services.** Payroll and Employee Benefits Services. Subject to the approval of the Bankruptcy Court, from and after the Closing Date, as and to the extent requested by Buyer, Seller shall retain employees offered employment by and with Buyer (provided that such offer is made no later than the first Business Day after the Closing Date and Buyer delivers to Seller a list of all such offerees ("Offeree List") no later than the close of business on the first Business Day after the Closing Date) on Seller's payroll and provide such employees with substantially the same compensation and benefits as they are receiving from Seller immediately prior to the Closing. Such employees shall perform for Buyer substantially the same services as they were performing for Seller immediately prior to the Closing. Seller shall be obligated to continue this arrangement until the earlier of (i) the date on which such employees resign in order to commence employment with Buyer or (ii) with respect to any particular employee, such time as Seller receives notice from Buyer that the employee has rejected Buyer's offer (of which rejection Buyer agrees to notify Seller promptly). Seller shall provide Buyer with reasonable supporting detail of any costs and expenses incurred by Seller pursuant to this paragraph as soon as is practicable following any such payment. Buyer shall promptly (but no later than the third Business Day after any payment by Seller pursuant to this paragraph) reimburse Seller for all costs and expenses incurred by Seller in providing compensation and benefits to such employees for their continuing services as described in the preceding sentences. It is the express desire and intention of Buyer and Seller to achieve the foregoing commercial arrangement. In the event that the Bankruptcy Court shall not approve any aspect of said arrangement, Buyer and Seller shall use their commercially reasonable efforts to reproduce said commercial arrangement within the limits imposed by the Bankruptcy Court. Buyer shall use commercially reasonable efforts to enable said employees to commence employment with Buyer with such compensation and benefits and other terms and conditions of employment as shall be outlined by Buyer in its offer of employment, but in any event such employment with Buyer, if accepted by the employee, shall commence no later than sixty (60) days following the Closing Date. Nothing in this paragraph shall suggest, imply or otherwise indicate that Buyer has agreed to assume any of Seller's benefits plans, programs or arrangements, which except for Buyer's reimbursement commitment as set forth herein, shall continue to remain the sole and exclusive responsibility of Seller. Nothing in this paragraph shall be construed to suggest that Buyer has any responsibility to reimburse Seller for the payment of any severance benefits, pay in lieu of notice, or any other payments relating to the termination of employment with Seller of any of Seller's employees, whether or not such employee commences employment with Buyer, and any such liabilities arising until and upon (but not after) the Closing shall remain the sole and exclusive responsibility of Seller. Nothing in this paragraph shall require Seller to retain on Seller's payroll or provide compensation and benefits to any employee whom Buyer has not listed on Buyer's Offeree List. Nothing in this paragraph shall constitute a promise of employment by Seller or Buyer for any specified term, or a guarantee of employment with Buyer at all.

(b)     **Accounting and IT Services.** From and after the Closing Date and through the date which is sixty (60) days after the Closing Date, as and to the extent requested by Seller and subject to Seller's approval of the costs to be incurred, other than the costs incurred by Buyer in the ordinary course of business consistent with past practice, Buyer shall provide reasonable accounting and information technology ("IT") services to and as designated by Seller so as to enable Seller to administer its bankruptcy case and wind-down its affairs in an orderly

fashion. Seller shall promptly reimburse Buyer for actual costs and expenses incurred by Buyer in providing accounting and IT services. It is the express desire and intention of Buyer and Seller to achieve the foregoing commercial arrangement. In the event that the Bankruptcy Court shall not approve any aspect of said arrangement, Buyer and Seller shall use their commercially reasonable efforts to reproduce said commercial arrangement within the limits imposed by the Bankruptcy Court.

## ARTICLE VIII CONDITIONS TO CLOSING

**Section 8.1      Conditions to Each Party's Obligations to Effect the Closing.** The respective obligations of each party to effect the sale and purchase of the Purchased Assets shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) no preliminary or permanent injunction or other order or decree by any federal or state court which prevents the consummation of the sale of any material part of the Purchased Assets contemplated hereby shall have been issued and remain in effect (each party agreeing to use its commercially reasonable efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any Governmental Authority which prohibits the consummation of the sale of the Purchased Assets; and

(b) the Bankruptcy Court shall have entered the Sale Order substantially in the form of Exhibit D hereto, such Sale Order shall be in full force and effect and shall not have been stayed, modified, reversed or amended (except if modified or amended with the written consent of Seller and Buyer).

**Section 8.2      Conditions to Obligations of Buyer.** The obligation of Buyer to effect the purchase of the Purchased Assets and the assumption of the Assumed Liabilities and Assumed Agreements contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Seller shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date and the representations and warranties of Seller which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date;

(b) Buyer shall have received a certificate from an executive officer of Seller, dated as of the Closing Date, to the effect that, to the best of such executive officer's knowledge, the conditions set forth in Section 8.2(a) have been satisfied;

(c) the Sale Order provides that any and all of the Encumbrances (other than Closing Encumbrances) on the Purchased Assets shall, upon Closing, attach only to the proceeds of the transactions contemplated hereby and not to the Purchased Assets;

(d) Buyer shall have received the other items to be delivered to it pursuant to Section 4.2; and

(e) the Sale Order shall have become a Final Order.

Any condition specified in this Section 8.2 may be waived by Buyer; provided that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

**Section 8.3      Conditions to Obligations of Seller.** The obligation of Seller to effect the sale of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Buyer shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date and the representations and warranties of Buyer which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date;

(b) Seller shall have received a certificate from an authorized officer of Buyer, dated as of the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Section 8.3(a) have been satisfied; and

(c) Seller shall have received the other items to be delivered to it pursuant to Section 4.3.

Any condition specified in this Section 8.3 may be waived by Seller; provided that no such waiver shall be effective against Seller unless it is set forth in a writing executed by Seller.

## ARTICLE IX TERMINATION AND ABANDONMENT

**Section 9.1** Termination. This Agreement may be terminated at any time prior to the Closing Date by:

(a) mutual written consent of Seller and Buyer;

(b) Seller, if there has been a material violation or breach by Buyer of any covenant, representation or warranty made by it contained in this Agreement which has prevented the satisfaction of any condition to the obligations of Seller to effect the Closing and such violation or breach has not been cured by Buyer within ten (10) Business Days of receipt of written notice thereof or is waived by Seller;

(c) Seller or Buyer, if (i) there shall be any law or regulation that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or (ii) consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of (A) the Bankruptcy Court or (B) any court or Governmental Authority having competent jurisdiction;

(d) Buyer or Seller, if the Sale Order has not been entered by the Bankruptcy Court within thirty (30) days after the Sale Hearing; provided that Buyer or Seller, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(d) if the failure to obtain the Sale Order within such time period results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;

(e) Buyer or Seller, if the Closing shall not have occurred on or prior to May 31, 2003 (the "Termination Date"), unless extended by mutual written agreement of Buyer and Seller; provided that Buyer or Seller, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(e) if the failure of the Closing to occur on or prior to such date results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement; or

(f) Buyer, if there has been a material violation or breach by Seller of any covenant, representation or warranty made by it contained in this Agreement which has prevented the satisfaction of any condition to the obligations of Buyer to effect the Closing and such violation or breach has not been cured by Seller within ten (10) Business Days of receipt of written notice thereof or is waived by Buyer.

**Section 9.2** Procedure and Effect of Termination. In the event of termination of this Agreement and abandonment of the transactions contemplated hereby by either or both of the parties pursuant to Section 9.1, written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein: (i) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which they were made; and (ii) Confidential Information from Seller shall be returned to Seller, and all Confidential Information from Buyer shall be returned to Buyer.

**Section 9.3** Extension; Waiver. At any time prior to the Closing, Seller, on the one hand, or Buyer, on the other hand, may (i) extend the time for the performance of any of the obligations or acts of the other party, (ii) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, (iii) waive compliance with any of the agreements of the other party contained herein or (iv) waive any condition to its obligations hereunder. Any agreement on the part of Seller, on the one

hand, or Buyer, on the other hand, to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of Seller or Buyer, as applicable.

#### ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.1 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of Seller and Buyer.

Section 10.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may be waived by the party or parties entitled to the benefits thereof only by a written instrument signed by the party or parties granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, or condition shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

Section 10.3 Survival. The parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder, and neither of the parties nor any of their respective officers, directors, representatives, employees, advisors or agents shall have any liability to the other after the Closing for any breach thereof. The parties hereto agree that only the covenants contained in this Agreement to be performed at or after the Closing Date shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing Date for any breach thereof.

Section 10.4 No Impediment to Liquidation. Nothing herein shall be deemed or construed as to limit, restrict or impose any impediment to Seller's right to liquidate, dissolve and wind-up its affairs and to cease all business activities and operations at such time as it may determine following the Closing.

Section 10.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (i) when personally sent/delivered, by facsimile transmission (with hard copy to follow) or sent by reputable express courier or (ii) five (5) days following mailing by registered or certified mail postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to Seller and Buyer shall be sent to the addresses indicated below:

(a) If to Seller, to:

SONICblue Incorporated  
2841 Mission College Boulevard  
Santa Clara, CA 95054  
Phone: (408) 588-8000  
Facsimile: (408) 980-5444  
Attention: Chief Financial Officer

with a copy to:

Pillsbury Winthrop LLP  
2550 Hanover Street  
Palo Alto, CA 94304-1115  
Phone: (650) 233-4500  
Facsimile: (650) 233-4545  
Attention: Gabriella A. Lombardi  
Craig A. Barbarosh

(b) If to Buyer, to:

Digital Networks North America, Inc.  
19 Chapin Road, Building C  
Pine Brook, New Jersey 07058-9777

Phone: (973) 396-7475  
Facsimile: (973) 396-7516  
Attention: Dom Golio

with a copy to:

Simpson Thacher & Bartlett  
10 Universal City Plaza  
Suite 1850  
Los Angeles, CA 91608  
Phone: (818) 755-9614  
Facsimile: (818) 755-7009  
Attention: Daniel Clivner

with a copy to:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017-3954  
Phone: (212) 455-2000  
Facsimile: (212) 455-2502  
Attention: Kenneth S. Ziman

Section 10.6 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and with respect to Seller, any entity that may succeed to substantially all the assets of Seller, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Buyer hereto, including by operation of law, without the prior written consent of Seller, provided, however, that this Agreement shall be assignable by Buyer, without the prior written consent of Seller, to an Affiliate of Buyer, so long as Buyer shall continue to remain obligated hereunder. Any assignment of this Agreement or any of the rights, interests or obligations hereunder in contravention of this Section 10.6 shall be null and void and shall not bind or be recognized by Seller or Buyer.

Section 10.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 10.8 Governing Law. This Agreement shall be governed by the laws of the State of California, without giving effect to the principles of conflicts of laws thereof.

Section 10.9 Submission to Jurisdiction. Unless and to the extent otherwise specifically provided herein, the parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Agreement or any other agreement or instrument contemplated hereby or entered into in connection therewith or any of the transactions contemplated hereby or thereby. Each party hereby irrevocably agrees that all claims in respect of such dispute or proceedings may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute or proceeding brought in such courts or any defense of inconvenient forum in connection therewith.

Section 10.10 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of

which, when executed and delivered, shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 10.11 Incorporation of Exhibits. All Schedules and all Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

Section 10.12 Entire Agreement. This Agreement (including all Schedules and all Exhibits) and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto.

Section 10.13 Remedies. Seller and Buyer hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement and that, in such event, Seller or its respective successors or assigns, or Buyer or its successors or assigns, as the case may be, may, in addition to any other rights and remedies existing in their favor, apply to the Bankruptcy Court or any other court of competent jurisdiction for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Agreement. Any liability on the part of Seller shall be deemed to be an expense of administration of the Chapter 11 Case and any related bankruptcy proceeding under Section 503(b) and 507(a) of the Bankruptcy Code.

Section 10.14 Bulk Sales or Transfer Laws. Buyer hereby waives compliance by Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions. Seller agrees to cooperate with Buyer, at Buyer's expense, in making any such bulk sales filings upon the reasonable request of Buyer.

Section 10.15 Headings. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

**SELLER:**

**SONICBLUE INCORPORATED**

By: 

Name: **Marcus Smith**  
Title: **Chief Financial Officer**

**DIAMOND MULTIMEDIA SYSTEMS, INC.**

By: 

Name: **Marcus Smith**  
Title: **Chief Financial Officer**

**BUYER:**

**DIGITAL NETWORKS NORTH  
AMERICA, INC.**

Name:  
Title:

IN WITNESS WHEREOF, this Agreement has been executed by the parties  
hereto as of the date first above written.

SELLER:

SONICBLUE INCORPORATED

By: \_\_\_\_\_

Name:

Title:

DIAMOND MULTIMEDIA SYSTEMS, INC.

By: \_\_\_\_\_

Name:

Title:

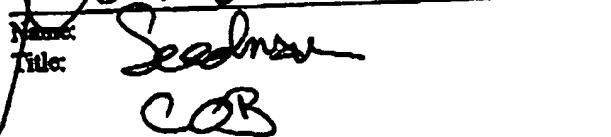
BUYER:

DIGITAL NETWORKS NORTH AMERICA, INC.

By: \_\_\_\_\_

Name:

Title:



A handwritten signature consisting of stylized initials "SL" followed by the surname "Lowe". Below the signature, the letters "COB" are handwritten.

Schedule 2.1

Purchased Assets

The Intellectual Property Agreements are listed on Schedule 2.5 and are incorporated herein by reference.

Patents and Patent Applications

1. Patent No. 6,360,053 (Issued) (United States)	Method and Apparatus for Fast Forwarding and Rewinding in a Video Playback Device
2. Patent No. 6,324,338 (Issued) (United States) <sup>1</sup>	Video Data Recorder with Integrated Channel Guide
3. Patent No. 5,841,940 (Issued) (Reissue Number RE37881) (United States)	Single Deck Dual Tape Path VCR System
4. Patent No. 5,479,302 (Issued) (United States)	Single Deck Dual Tape Path VCR System
5. Patent No. 5,600,839 (Issued ) (United States)	System and Method for Controlling Assertion of a Peripheral Bus Clock Signal Through a Slave Device
6. Serial No. 09/855,813 (Pending) (United States)	Method and System for Extending Recording
7. Serial No. 09/131,091 (Pending) (United States)	Video Data Recorder with Personal Channels
8. Serial No. 09/131,092 (Pending) (United States)	Video Data Recorder for Recording Predefined Format Shows
9. Serial No. 09/279,385 (United States)	Video Data Recorder for Recording Predefined Format Shows
10. Serial No. 09/262,144 (Pending) (United States)	Digital Recording and Playback
11. Serial No. 10/013,930 (Pending) (United States)	Method and Apparatus for Fast Forwarding and Rewinding in a Video Playback Device
12. Serial No. 09/412,994 (Pending) (United States)	Field Upgradeable Recording Device
13. Serial No. 09/412,995 (Pending) (United States)	Method and Apparatus for Preventing Fast Forwarding Through Commercials
14. Serial No. 09/412,992 (Pending) (United States)	Pay Per View Architecture Providing For Local Storage of Content
15. Serial No. 09/412,993 (Pending) (United States)	Providing Audience Flow in a Personal Television Device
16. Serial No. 09/412,991 (Pending) (United States)	Method and Apparatus for Providing Information to a Viewer During Pause Periods in a Video Playback Device
17. Serial No. 10/076,658 (Pending) (United States)	Hierarchical Tree Structure Program Guide
18. Serial No. 60/350,317 (Pending Provisional) (U.S.)	Hierarchical Tree Structure Program Guide

---

<sup>1</sup> On March 28, 2003, Seller was notified of an Interference that was filed with the U.S. Department of Commerce Patent and Trademark Office regarding Seller's U.S. Patent No. 6,324,338. The identity of the applicant is unknown.

19.	Serial No. 09/925,120 (United States)	Method and System for Remote Television Replay Control (Part I)
20.	Serial No. 09/925,109 (Pending) (United States)	Method and System for Remote Television Replay Control (Part II)
21.	Serial No. 09/976,686 (Pending) (United States)	Fail Safe Recovery
22.	Serial No. 09/978,170 (Pending) (United States)	Method and System for Pause Ads
23.	Serial No. 09/978,144 (Pending) (United States)	Method and System for Dynamic Ad Placement
24.	Serial No. 09/925,121 (Pending) (United States)	Method and System for Remote Television Replay Control (Part III)
25.	Serial No. 10/033,401 (Pending) (United States)	Advertisements in a Television Recordation System
26.	Serial No. 09/972,424 (Pending) (United States)	One Click Web Records
27.	Serial No. 10/124,064 (Pending) (United States)	Resolving Recording Conflicts
28.	Serial No. 10/215,904 (Pending) (United States)	Network Video Unit
29.	Serial No. 10/124,506 (Pending) (United States)	Improved Guide Content Management
30.	Serial No. 10/124,190 (Pending) (United States)	Accessing Programs Using Network Digital Video Recording Devices
31.	Serial No. 10/124,583 (Pending) (United States)	Method and Apparatus for Sending Content Between Client Devices
32.	Serial No. 10/133,184 (Pending) (United States)	System and Method for Indexing Commercials in a Video Presentation
33.	Serial No. 10/132,968 (Pending) (United States)	System and Method for Improved Blackfield Detection
34.	Serial No. 2339785 (Pending) (Canada)	Video Data Recorder with Integrated Channel Guide
35.	Serial No. 2339784 (Pending) (Canada)	Video Data Recorder with Personal Channels
36.	Serial No. 2339787 (Pending) (Canada)	Video Data Recorder for Recording Predefined Format Shows
37.	Serial No. 2339789 (Pending) (Canada)	Method and Apparatus for Fast Forwarding and Rewinding in a Video Playback Device
38.	Serial No. 99940915.4 (Pending) (Europe)	Video Data Recorder with Integrated Channel Guide
39.	Serial No. 99939063.6 (Pending) (Europe)	Video Data Recorder with Personal Channels
40.	Serial No. 99942021.9 (Pending) (Europe)	Video Data Recorder for Recording Predefined Format Shows
41.	Serial No. 99939033.9 (Pending) (Europe)	Method and Apparatus for Fast Forwarding and Rewinding in a Video Playback Device
42.	Serial No. 1959667.5 (Pending) (Europe)	Method and System for Remote Television Replay Control (Part I)
43.	Serial No. 1963848.5 (Pending) (Europe)	Method and System for Remote Television Replay Control (Part II)

44.	Serial No. 1957504.2 (Pending) (Europe)	Method and System for Remote Television Replay Control (Part III)
45.	Serial No. 2000-564,377 (Pending) (Japan)	Video Data Recorder with Integrated Channel Guide
46.	Serial No. 2000-564,375 (Pending) (Japan)	Video Data Recorder with Personal Channels
47.	Serial No. 2000-564,374 (Pending) (Japan)	Video Data Recorder for Recording Predefined Format Shows
48.	Serial No. 2000-564,376 (Pending) (Japan)	Method and Apparatus for Fast Forwarding and Rewinding in a Video Playback Device
49.	Serial No. 2002-518,078 (Pending) (Japan)	Method and System for Remote Television Replay Control (Part I)
50.	Serial No. 2002-518,079 (Pending) (Japan)	Method and System for Remote Television Replay Control (Part II)
51.	Serial No. 2002-518,077 (Pending) (Japan)	Method and System for Remote Television Replay Control (Part III)
52.	Serial No. 54675/99 (Australia)	Digital Video Recorder
53.	Serial No. 55487/99 (Australia)	Video Data Recorder for Recording Predefined Format Shows
54.	Serial No. 53397/99 (Australia)	Method and Apparatus for Fast Forwarding and Rewinding in a Video Recording Device
55.	Serial No. 90119547 (Pending) (Taiwan)	Method and System for Remote Television Replay Control (Part I)
56.	Serial No. 90119546 (Pending) (Taiwan)	Method and System for Remote Television Replay Control (Part II)
57.	Serial No. 90119545 (Pending) (Taiwan)	Method and System for Remote Television Replay Control (Part III)
58.	Serial No. PCT/US01/24895	Method and System for Remote Television Replay Control (Part I)
59.	Serial No. PCT/US01/24930	Method and System for Remote Television Replay Control (Part II)
60.	Serial No. PCT1US01/24883	Method and System for Remote Television Replay Control (Part III)
61.	Serial No. PCT/US01/42676	Fail Safe Recovery
62.	Serial No. PCT/US01/32169	Method and System for Pause Ads
63.	Serial No. PCT/US01/32160	Method and System for Dynamic Ad Placement
64.	Serial No. PCT/US01/50855	Advertisements in a Television Recordation System
65.	Serial No. PCT/US01/50763	One Click Web Records
66.	Serial No. 10/396,230 (pending) (US).	System and Method for Aggregating Commercial Navigation Information
67.	Application No. 10/396,229	Apparatus for Viewing Television with Pause Capability
68.	Application No. 10/393,599	Later Viewing of Skipped Commercials

69. Application No. 10/396,230

System and Method for Navigation of Indexed  
Video Content

Domain Names

1. Replaytv.net
2. Replaytvdirect.com
3. Replaytv.com
4. Replaydirect.com
5. Replay.com
6. Myreplaytv.com
7. Myreplaytv.net
8. Personaltelevision.com

Registered Copyrights

None.

Trademarks Registered and Pending

1. Registration No. 2,338,455 (United States)	QUICKSKIP
2. Registration No. 2,402,559 (United States)	REPLAYTV
3. Registration No. 2,481,355 (United States)	REPLAY and DESIGN
4. Serial No. 76/376,425 (United States) (Pending)	REPLAYPC
5. Serial No. 75/933,285 (United States)	REPLAYTV & LOGO
6. Serial No. 76/024,012 (United States) (Suspended)	RETROSAVE
7. Serial No. 76/024,011 (United States)	NEVER MISS YOUR FAVORITE SHOWS
8. Serial No. 76/023,938 (United States)	IT'S YOUR TV, WATCH WHAT YOU WANT
9. Serial No. 76/026,570 (United States) (Suspended)	POWER TO THE POTATO
10. Serial No. 75/933,267 (United States)	GIVE YOUR TV A BRAIN
11. Serial No. 76/049,260 (United States)	PERSONAL CHANNEL
12. Serial No. 75/802,147 (United States) (Suspended)	PRIMETIME ANYTIME
13. Serial No. 75/554,432 (United States) (Suspended)	PRIMETIME ANYTIME
14. Serial No. 75/802,131 (United States)	REPLAY ZONE
15. Serial No. 76/162,362 (United States)	THERE'S ALWAYS SOMETHING GOOD ON
16. Serial No. 75/802,148 (United States) (Suspended)	ZONE
17. Registration No. 203200 (Austria)	REPLAYTV
18. Registration No. 0200233 (Benelux)	REPLAYTV
19. Registration No. 558,401 (Canada)	REPLAYTV
20. Serial No. 1007601 (Canada)	PRIMETIME ANYTIME

21.	Serial No. 13124892 (France)	REPLAYTV
22.	Serial No. T2000102301 (Finland)	REPLAYTV
23.	Serial No. 3014269.4/09 (Germany)	REPLAYTV
24.	Serial No. 172 (Greece)	REPLAYTV
25.	Serial No. 1121094 (Italy)	REPLAYTV
26.	Registration No. 4453936 (Japan)	REPLAYTV
27.	Serial No. 23108/99 (Japan)	PRIMETIME ANYTIME
28.	Serial No. 358.777 (Portugal)	REPLAYTV
29.	Serial No. 2.418.024 (Spain)	REPLAYTV
30.	Serial No. 01-4641 (Sweden)	REPLAYTV
31.	Serial No. 13124892 (France)	REPLAYTV